

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD THOMAS,

Plaintiff,

v.

ANTHONY HEDGPATH, et al.,

Defendants.

Case No.: C 12-3071 CW (PR)

ORDER GRANTING EXTENSION OF TIME  
TO FILE OPPOSITION TO MOTION TO  
DISMISS, GRANTING REQUEST TO STAY  
DISCOVERY AND DENYING MOTIONS FOR  
PRELIMINARY INJUNCTION,  
APPOINTMENT OF COUNSEL AND TO  
FILE SECOND AMENDED COMPLAINT

(Docket nos. 19, 20, 21, 32, 34)

Plaintiff, a state prisoner, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by prison officials and medical staff at Salinas Valley State Prison (SVSP).

On April 5, 2013, the Court found that Plaintiff's allegations state a cognizable claim for deliberate indifference to his serious medical needs and ordered the first amended complaint served on Defendants. Defendants have filed a motion to dismiss the first amended complaint for failure to state a claim upon which relief may be granted and on the ground that they are entitled to qualified immunity. Plaintiff has moved for an extension of time to oppose the motion. Good cause appearing, Plaintiff's request is GRANTED. Plaintiff shall file and serve on Defendants' counsel his opposition to the motion to dismiss by September 1, 2013. Defendants shall file a reply to the opposition by September 15, 2013.

Defendants also move to stay discovery pending resolution of the motion to dismiss. It is well settled that a stay of discovery should be granted until the threshold question of

1 qualified immunity is decided. See Harlow v. Fitzgerald, 457 U.S.  
2 800, 818 (1982); Dimartini v. Ferrin, 889 F.2d 922, 926 (9th Cir.  
3 1989). Accordingly, Defendants' request for a stay of discovery is  
4 GRANTED.

5 Plaintiff moves for a preliminary injunction prohibiting  
6 prison officials at SVSP from housing him in a double-cell. When  
7 Plaintiff filed this action, he was incarcerated at SVSP.  
8 Recently, however, Plaintiff notified the Court that he has been  
9 transferred to the Substance Abuse Treatment Facility at Corcoran  
10 State Prison. Because Plaintiff no longer is incarcerated at  
11 SVSP, his claim for preliminary injunctive relief is DENIED as  
12 moot. Further, any claims for injunctive relief pertaining to  
13 Plaintiff's incarceration at Corcoran State Prison must be brought  
14 in the Eastern District, where Corcoran is located. See 28 U.S.C.  
15 § 1391(b). 28 U.S.C. § 84(b).

16 Plaintiff seeks leave to amend his complaint a second time,  
17 to add new claims and Defendants. The claims in the first amended  
18 complaint, to which Defendants have responded, concern Defendants'  
19 decision to place Plaintiff in double-cell housing in 2010, in  
20 alleged violation of Plaintiff's Eighth Amendment rights;  
21 Plaintiff allegedly exhausted his administrative remedies with  
22 respect to these claims in 2011. The claims that Plaintiff seeks  
23 to include in a second amended complaint concern his having been  
24 charged with a disciplinary rules violation in February 2012 for  
25 his alleged participation in an inmate riot and being found guilty  
26 of that charge at a disciplinary hearing held in September 2012.  
27 Plaintiff allegedly exhausted his administrative remedies with  
28 respect to these claims in March 2013. (Docket no. 19.)

"A party asserting a claim, counterclaim, crossclaim, or

1 third-party claim may join, as independent or alternative claims,  
2 as many claims as it has against an opposing party." Fed. R. Civ.  
3 P. 18(a). However, the rules are somewhat different when, as  
4 here, there are multiple parties. Multiple parties may be joined  
5 as defendants in one action only "if any right to relief is  
6 asserted against them jointly, severally, or in the alternative  
7 with respect to or arising out of the same transaction,  
8 occurrence, or series of transactions or occurrences; and any  
9 question of law or fact common to all defendants will arise in the  
10 action." Fed. R. Civ. P. 20(a)(2).

11 The Defendants named by Plaintiff in his proposed second  
12 amended complaint are different from the Defendants who have been  
13 served with the first amended complaint. Further, the claims in  
14 the proposed second amended complaint are not based on the same  
15 transaction or occurrence or series of transactions and  
16 occurrences as the claims in the first amended complaint, and  
17 there are not questions of law or fact common to all of the  
18 Defendants. Thus, the allegations in the proposed second amended  
19 complaint do not satisfy the joinder requirements under Rule  
20 20(a)(2). Accordingly, Plaintiff's request to add new claims and  
21 Defendants in a second amended complaint is DENIED because  
22 allowing him to do so would result in the improper joinder of  
23 Defendants. See Fed. R. Civ. P. 21. This order does not preclude  
24 Plaintiff from filing a new and separate action asserting the  
25 claims raised in his proposed second amended complaint.

26 Finally, Plaintiff moves for the appointment of counsel to  
27 represent him in this action. There is no constitutional right to  
28 counsel in an action brought pursuant to 42 U.S.C. § 1983. Rand

1 v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997). The court may  
2 ask counsel to represent an indigent litigant under 28 U.S.C.  
3 § 1915 only in "exceptional circumstances," the determination of  
4 which requires an evaluation of both (1) the likelihood of success  
5 on the merits, and (2) the ability of the plaintiff to articulate  
6 his claims pro se in light of the complexity of the legal issues  
7 involved. Id. Both of these factors must be viewed together  
8 before reaching a decision on a request for counsel under § 1915.  
9 Id.

10 The Court is unable to assess at this time whether  
11 exceptional circumstances exist that warrant seeking volunteer  
12 counsel to accept a pro bono appointment. The proceedings are at  
13 an early stage and it is premature for the Court to determine  
14 Plaintiff's likelihood of success on the merits. Accordingly, the  
15 request for appointment of counsel is DENIED without prejudice to  
16 the Court's considering at a later stage of the proceedings  
17 whether appointment of counsel is warranted.

18 This order terminates Docket nos. 19, 20, 21, 32 and 34.

19 IT IS SO ORDERED.

20 Dated: 7/22/2013

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22 CLAUDIA WILKEN  
23 UNITED STATES DISTRICT JUDGE  
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